

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAMBRIDGE VALLEY MACHINING, INC.

Plaintiff,

-against-

HUDSON MFG LLC, HUDSON STANDARD
LLC, BILLIE HUDSON III,
AND LAUREN HUDSON

Defendants.

Civil Action No. 1:18-cv-1022 (DNH/CFH)

**Motion for Summary Judgment Pursuant
to Federal Rule of Civil Procedure 56**

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
(Including Statement of Material Facts)

Defendants Hudson MFG LLC, Hudson Standard LLC, Billie Hudson III and Lauren Hudson (“Defendants”), by and through the undersigned attorneys, files this Motion for Summary Judgment (“Motion”) against Cambridge Valley Machining, Inc. (“CVMI”), and respectfully requests that the Court grant the Motion as follows:

I. INTRODUCTION

This case involves an agreement between Hudson MFG, LLC and CVMI for CVMI to manufacture the grips, strikers and barrels for Hudson MFG, LLC’s flagship product, the H-9 handgun. Despite favorable reviews of the H-9 and overwhelming demand for the product, Hudson MFG, LLC was forced into bankruptcy by the failure of CVMI to perform its obligations in producing the H-9. This Motion, and the evidence incorporated therein, demonstrates that there is no fact issue as to whether CVMI breached its obligations: CVMI clearly failed to perform its obligations, causing Hudson MFG, LLC first to lose out on millions of dollars of profit, and, ultimately, to be forced into bankruptcy.

The agreement between Hudson MFG, LLC, while not reduced to an executed, written contract, was reached in late 2016, via the acceptance of a Purchase Order from Hudson MFG LLC by CVMI. Production of the H-9 parts began in earnest in June of 2017. CVMI failed immediately and consistently to live up to its obligations.

CVMI breached its agreement with Hudson MFG LLC in the following ways:

1. CVMI failed to deliver shipments of parts that would allow Hudson MFG, LLC to sell completed guns. CVMI intentionally created a parts imbalance that ensured Hudson MFG LLC could not meet demand.
2. CVMI consistently failed to meet production milestones.
3. CVMI failed to communicate in a commercially reasonable manner.
4. CVMI repeatedly held need parts hostage to force Hudson to pay for unneeded parts.
5. CVMI failed to produce grips to specification, causing magazines to fall out of completed H-9s and resulting in warranty work.
6. CVMI produced hundreds of dangerously defective barrels, then refused to remedy its defective work, and breached an agreement with Hudson MFG LLC to ship parts on payment, then filed the current lawsuit, which ultimately forced Hudson MFG, LLC into bankruptcy.

The only agreements at issue in this case were between Hudson MFG LLC and CVMI. Despite this case being a clear-cut breach of contract case between two business entities, CVMI has added the parent company of Hudson MFG, LLC (Hudson Standard, LLC) and the founders of Hudson MFG, LLC (Billie Hudson III and Lauren Hudson) individually in claims seeking to pierce the corporate veil. This motion demonstrates that, as a matter of law, these claims must fail.

II. SUMMARY JUDGMENT EVIDENCE

In support of this Motion, Defendants rely on the Record, as well as the following evidence:

Exhibit A		Declaration of Billie Hudson III (“Cy Hudson”) produced as
	A-1	Email chain between Cy Hudson and James Moore produced as HUDSON000513-HUDSON000515
	A-2	Email chain between Barbara Stockford and Dan Wickswat (copying Cy Hudson) produced as HUDSON001225-HUDSON001228

	A-3	Email from Cy Hudson to James Moore and Dan Wickswat produced as HUDSON000228
	A-4	Email chain between CVMI and Hudson MFG LLC produced as HUDSON000220-224
	A-5	Email chain between CVMI and Hudson MFG LLC produced as HUDSON000225-227
	A-6	Email Chain between Cy Hudson and Lucas Fearon produced as HUDSON001657-660
	A-7	Email from Cy Hudson to James Moore produced as HUDSON000489-490
	A-8	Email chain between Cy Hudson and James Moore produced as CVMI-05084-85
Exhibit B		Declaration of Lauren Hudson
	B-1	Email chain attaching NDA Between Hudson and CVMI HUDSON000500-HUDSON000505
	B-2	Printout of Debits from Hudson MFG LLC Chase Bank Account (produced previously as a native file and as HUDSON002407-HUDSON002538
	B-3	Receipt Imbalance Spreadsheet
	B-4	Email Chain between Lauren Hudson and James Moore produced as CVMI-06628-34
	B-5	Email Chain between Lauren Hudson and James Moore produced as CVMI-02789-92
	B-6	Email Chain between Lauren Hudson and CVMI produced as HUDSON001289-1300
	B-7	Email Chain between Lauren Hudson and CVMI produced as HUDSON001313-1316
	B-8	Email Chain between Lauren Hudson and CVMI produced as HUDSON001309-1312
	B-9	Email Chain between Lauren Hudson and Jonas Bashaw produced as CVMI-08948-49
	B-10	Email from Lauren Hudson to James Moore attaching slide purchase order produced as HUDSON001553-1554
	B-11	Email from Lauren Hudson to James Moore produced as HUDSON001562
	B-12	Email Chain between Lauren Hudson and James Moore produced as HUDSON000423
	B-13	Email Chain between Lauren Hudson and Lucas Fearon produced as HUDSON001702-709
	B-14	Email Chain between Hudson MFG, LLC (copying Lauren Hudson) produced as CVMI-15690
	B-15	Email Chain between Hudson MFG, LLC (copying Lauren Hudson) produced as CVMI-15449-50
	B-16	Compilation of open purchase orders at the close of 2018, produced as HUDSON002577-HUDSON002580
Exhibit C		Declaration of Jack K. Reid
	C-1	Hudson MFG, LLC Purchase Order of November 11, 2016 and CVMI Acknowledgment of December 12, 2016, produced as CVMI-09795-96

	C-2	Internal CVM Email produced as CVM-09460-61
	C-3	Internal CVM Email produced as CVM-02787-88
	C-4	Internal CVM Shipment Schedule produced as CVM-03398-3412
	C-5	Internal CVM Email produced as CVM-05197-99
	C-6	Emails between CVM and Hudson MFG, LLC produced as CVM-15670
	C-7	Emails between CVM and Hudson MFG, LLC produced as CVM-15668
	C-8	Internal CVM emails produced as CVM-16497-98
	C-9	Internal CVM emails produced as CVM-15470-72
	C-10	Internal CVM Corrective Action Report produced as CVM-16466-16480
	C-11	Internal CVM Email produced as CVM-05313-15
	C-12	CVM Aged Trial Balance produced as CVM-01570-71
	C-13	Internal CVM Email produced as CVM-02214
	C-14	Internal CVM Email produced as CVM-04580-81
	C-15	Internal CVM Email produced as CVM-09041-42
	C-16	Internal CVM Email produced as CVM-15720
	C-17	Internal CVM Email produced as CVM-05098

III. STATEMENT OF MATERIAL FACTS

A. Hudson MFG LLC's Business and Negotiation of the Relationship with Cambridge Valley Machining, Inc.

1. In 2014, Defendants Billie Hudson III and Lauren Hudson conceived of a pistol design that combined the best aspects of the classic model 1911 handgun, with a striker fired design.¹ They designated this new firearm the Hudson H9.² Lauren and Billie Hudson III formed Hudson MFG, LLC to bring this design to market.³ Hudson MFG, LLC spent three years developing the design and prototyping.⁴ Hudson MFG LLC spent \$1,488,113.23 from 2014 to 2017 producing and improving prototypes.⁵

2. In 2016, Hudson MFG LLC began discussions with Cambridge Valley Machining Inc. (“CVM”), negotiating an agreement for CVM to produce the parts necessary to assemble and sell

¹ Exhibit A at para 2; Exhibit B at para 2.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

the H9 at commercial quantities.⁶ Hudson MFG LLC initially sought the parts to build 10,000 guns per month.⁷ After some back and forth with CVM, Hudson revised its request to the parts necessary to build 10,000 guns at 2,500 guns per month.⁸ CVM sent a quote for the parts necessary to build 10,000 guns at 2,500 guns per month, and Hudson MFG LLC sent a purchase order for that amount.⁹ Both CVM's quote and Hudson's purchase order state the CVM will ship 2,500 of *each part* monthly.¹⁰

3. During negotiation of the order, CVM represented that, upon receiving design documents, CVM could manufacture the "first production samples" in 16 weeks—"this time would be spent designing tooling/building tooling/programming/and producing the first article samples."¹¹ After approval of the first article samples, "it could take another 4-6 weeks for first production deliveries depending on coating and heat treat requirements."¹²

4. CVM received Hudson MFG, LLC's purchase order on November 8, 2016.¹³ Between the initial contact and negotiations in January - February of 2016 and the purchase order, Hudson MFG, LLC worked with its engineers to refine its design for the H9 to make it easier for CVM to manufacture.¹⁴ CVM approved Hudson MFG, LLC's designs before issuing its quotes.¹⁵

⁶ Exhibit A at para 3; Exhibit B at para 3. *See also* Exhibit B-1 (email attaching NDA).

⁷ Exhibit A at para 3; Exhibit B at para 3.

⁸ *Id.*

⁹ *See* Exhibits A and C to Dkt. No. 1 (Ex. A is CVM's quote and Ex. C is Hudson MFG, LLC's purchase order).

¹⁰ *Id.*

¹¹ Exhibit A at para 4; Exhibit B at para 4. *See also* Exhibit A-1 at HUDSON000513 (James Moore emailing re: production timeline expectations).

¹² *Id.*

¹³ Exhibit A at para 5; Exhibit B at para 5. Exhibit C-1 at CVM-09795-96.

¹⁴ Exhibit A at para 5; Exhibit B at para 5. *See also* Exhibit A-1 at HUDSON000513 (Email showing initial discussions and negotiations in January and February of 2016).

¹⁵ Exhibit A at para 5; Exhibit B at para 5. *See also* Exhibit A-1 at HUDSON000513-14 (James Moore stating that he cannot speak to production rate until CVM receives drawings).

5. Upon issuing the purchase order, Hudson MFG, LLC took steps in detrimental reliance of its agreement with CVMI. On November 28, 2016, Hudson paid \$41,466.15 to Trenton Forging Company¹⁶ for custom tooling required by CVMI.¹⁷ Hudson paid CVMI \$70,776.54 in expense reimbursements and tooling fees before ever receiving its first article (the first gun to be built using the production manufacturing method).¹⁸

B. CVMI immediately failed to timely deliver on its promise of timely creating the first article, continually sent imbalanced shipments, and failed to produce its promised quantities.

7. As stated above, CVMI represented that it would deliver its first article within 16 weeks of the purchase order.¹⁹ That would have been on or around March 8, 2017. CVMI did not deliver the parts necessary to assemble Hudson's first article gun until July 27, 2017.²⁰

8. CVMI also failed, from the beginning, to ship parts in balanced shipments²¹—this action by CVMI was the single most damaging factor in the decline of Hudson's business. CVMI knew that Hudson's business could only make money if Hudson was able to sell guns. CVMI knew that in order to sell each gun, Hudson needed to receive one striker, one grip and one barrel. CVMI's first shipment to Hudson was 18 barrels, received by Hudson on June 29, 2017.²² CVMI's next shipment was 105 barrels, received by Hudson on June 13, 2017.²³ At this point, Hudson was obligated to pay for 123

¹⁶ Exhibit A at para 6; Exhibit B at para 6. *See also* Exhibit B-2 at p. 2 (showing payment to Trenton Forge).

¹⁷ Exhibit A at para 6; Exhibit B at para 6.

¹⁸ Exhibit A at para 6; Exhibit B at para 6.

¹⁹ Exhibit A at para 7; Exhibit B at para 7. *See also* Exhibit A-1 at HUDSON000513 (James Moore stating “16 weeks for first production samples is a good guide”).

²⁰ Exhibit A at para 7; Exhibit B at para 7. *See also* Exhibit B-3 (showing the receipts by Hudson MFG LLC of CVMI parts).

²¹ Exhibit A at para 8; Exhibit B at para 8. *See also* Exhibit B-3 (showing the receipts by Hudson MFG LLC of CVMI parts).

²² *Id.*

²³ *Id.*

barrels before it could build a single gun.²⁴ On July 19, 2017, Hudson received 7 grips, and still could not build a single gun.²⁵ On July 27, 2017, nearly a full month into production, Hudson finally received 5 strikers, at which point it could build 5 guns.²⁶ On July 28, 2017, Daniel Wickswat, leader of the CVMI team working on Hudson's grips, sent a production schedule in which he commits CVMI to ship 100 grips in the third week of August, 350 in the fourth week of August, 500 in the fifth week of August, and 700 per week going forward.²⁷

9. From July 27, 2017 to September 7, Hudson was limited by CVMI's failure to ship any strikers.²⁸ On September 7, 2017, Hudson received 6 strikers from CVMI.²⁹ This shipment allowed Hudson to bring its total production up to 11 firearms produced for sale between June 29, 2017 and September 7, 2017.³⁰

10. On September 26, 2017, Hudson received a shipment of 263 strikers.³¹ At this point, Hudson was able to bring its cumulative, all-time of production H9s up to 35, due to CVMI's failure to ship grips. As of October 1, 2017, Hudson had paid CVMI \$138,944.09,³² and had received parts enabling Hudson to sell 35 guns. Hudson's standard wholesale price, per H9, was \$779.96, meaning that, through October 1, 2017, in over three months of production, CVMI had provided production parts

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Exhibit A at para 8; Exhibit B at para 8. *See also* Exhibit A-2 at HUDSON001225-1228 (committing CVMI to a production schedule).

²⁸ Exhibit A at para 9; Exhibit B at para 9. *See also* Exhibit B-3 (showing dates Hudson MFG LLC received CVMI parts).

²⁹ Exhibit A at para 9; Exhibit B at para 9. *See also* Exhibit B-3 (showing dates Hudson MFG LLC received CVMI parts).

³⁰ Exhibit A at para 9; Exhibit B at para 9. *See also* Exhibit B-3 (showing dates Hudson MFG LLC received CVMI parts).

³¹ Exhibit A at para 10; Exhibit B at para 10. *See also* Exhibit B-3 (showing dates Hudson MFG LLC received CVMI parts).

³² Exhibit A at para 10; Exhibit B at para 10. *See also* Exhibit B-2 (showing payments from Hudson MFG LLC to CVMI).

sufficient to generate just \$27,298.60 in revenue.³³ In accepting the purchase order, CVMI agreed to supply 2,500 of *each part* per month.³⁴ If CVMI had performed as contracted for three months, Hudson would have received parts enabling it to generate \$5,849,700.00 in revenue.³⁵

11. Despite knowing that making imbalanced shipments was severely hindering Hudson's cashflow,³⁶ CVMI continued sending imbalanced shipments.³⁷ Hudson called out the imbalances and explained the need for balanced shipments dozens of times.³⁸ By the close of 2017, CVMI shipped Hudson 2,165 grips (for which Hudson incurred the obligation to pay \$259,800.00).³⁹ At the same time, CVMI had only shipped Hudson the parts to complete 1,325 complete guns.⁴⁰ This trend, combined with the overall low amount of production was devastating to Hudson's cashflow—and CVMI was well aware of this fact.⁴¹

C. Hudson made every effort to improve CVMI's production—CVMI failed to communicate in a commercially reasonable manner and focused on other projects while misleading Hudson.

³³ Exhibit A at para 10; Exhibit B at para 10.

³⁴ Exhibit A at para 10; Exhibit B at para 10; *See also* Exhibit C-1 (purchase order and quote showing monthly shipment commitment).

³⁵ Exhibit A at para 10; Exhibit B at para 10 (10,000 x \$779.96).

³⁶ *See e.g.* Exhibit A-3 at HUDSON000228, Exhibit B-4 at CVMI-06628 (emails demonstrating that Hudson MFG, LLC informed CVMI of the impact of CVMI's failure to produce on Hudson MFG, LLC's cashflow). Exhibit A at para 11; Exhibit B at para 11.

³⁷ Exhibit A at para 11; Exhibit B at para 11; Exhibit B-3 (showing dates Hudson MFG LLC received CVMI parts).

³⁸ Exhibit A at para 11; Exhibit B at para 11; *See also, e.g.*, Exhibit B-6 at CVMI-06628 (explaining the impact on Hudson MFG, LLC's business).

³⁹ Exhibit A at para 11; Exhibit B at para 11; *See also* Exhibit B-3 (showing dates Hudson MFG LLC received CVMI parts).

⁴⁰ Exhibit A at para 11; Exhibit B at para 11; *See also* Exhibit B-3 (showing dates Hudson MFG LLC received CVMI parts).

⁴¹ Exhibit A at para 11; Exhibit B at para 11; *See also, e.g.*, Exhibit B-6 at CVMI-06628 (explaining the impact on Hudson MFG, LLC's business), Exhibit A-3 (explaining that failure to produce was harming Hudson MFG, LLC's cashflow).

12. Given that CVMI demonstrated its inability to produce 2,500 of each part, per month, in order to salvage the relationship, Hudson set out to determine what were realistic expectations from CVMI.⁴² From June to September of 2017, Hudson made numerous demands for better communication from CVM regarding the status of production.⁴³

13. In order to try to help CVMI improve production, Hudson made extraordinary efforts, including hiring Elizabeth Coffman, a full-time employee, just to monitor CVMI production and communications with CVMI personnel,⁴⁴ and sending Hudson's program engineer, Zach Thull to CVMI in April 2017,⁴⁵ and September 2017, and May 2018 to work with CVMI onsite to improve production.⁴⁶ Billie Hudson III and Lauren Hudson both visited CVM to assist in problem solving.⁴⁷

14. On September 7, 2017, in response to the cascading delays, imbalanced shipments and general failure of CVMI to produce a viable amount of parts, Hudson had a conference call with the team leaders of CVMI.⁴⁸ On the call, CVMI discussed the issues slowing production and the plans to address these issues, along with CVMI's expectations regarding current and future output.⁴⁹ Lauren Hudson took notes during the conversation, and spent the next five days condensing the notes into a

⁴² Exhibit A at para 12; Exhibit B at para 12.

⁴³ Exhibit A at para 12; Exhibit B at para 12. *See also, e.g.*, Exhibit C-2 (6/23/2017 CVMI internal email stating that Hudson "want[s] us to identify milestones to hit along the way to getting them parts," and demonstrating that Moore refused to comment on Hudson's expectations being achievable), Exhibit A-4 at HUDSON000223 (6/30-7/6/2017 email chain seeking better communication), Exhibit A-5 at HUDSON000225 (9/27/2017 email chain seeking better communication from CVMI)

⁴⁴ Exhibit A at para 13; Exhibit B at para 13. *See also* Exhibit A-5 at HUDSON000225 (introducing Elizabeth Coffman to CVMI).

⁴⁵ Exhibit A at para 13; Exhibit B at para 13. *See also* Exhibit A-5 at HUDSON000225 (Zach Thull emailing from CVM).

⁴⁶ Exhibit A at para 13; Exhibit B at para 13. *See also* Exhibit A-5 at HUDSON000226-27 (detailing Thull's efforts at CVM).

⁴⁷ Exhibit A at para 13; Exhibit B at para 13.

⁴⁸ Exhibit A at para 14; Exhibit B at para 14. *See also* Exhibit B-5 at CVMI-02791 (acknowledging conference call).

⁴⁹ Exhibit A at para 14; Exhibit B at para 14.

release schedule that would balance the existing parts, then provide balanced shipments going forward.⁵⁰ Once the shipping imbalance was rectified, the release schedules call for balanced shipments of 360 of each part, per week, for two months, scaling up into 625 of each part going forward until order completion.⁵¹

15. On September 11, 2017, Hudson sent CVMI the proposed release schedule, stating “Attached are the updated release schedules per our conversation . . . For cash flow and overall program communications, it’s critical that we hit these timelines, so from each of the program leads, I need to know urgently, any risk to meeting these milestones, and how we can tackle it.”⁵² The email continues, “**Open Questions to CVM:** . . . Review of these release schedules for any identified risk.”⁵³ The email also says, “**What else, at this point, is CVM missing from Hudson that will allow us to hit our targets?**”⁵⁴ This email was clearly, above all, a request for CVMI to commit to a level of production, or, explain why it could not do so and propose what it could do.⁵⁵

16. CVMI’s response was silence for three days. Then after two, increasingly tense follow-ups from Hudson on September 13, 2017, the barrel team leader, Dan Bombria, responded on September 14, 2017 without mentioning the release schedule.⁵⁶ Hudson responded the same day asking “Are you confident we can hit our release schedule?”⁵⁷ The same day, Jonas Bashaw, the striker team leader,

⁵⁰ Exhibit A at para 14; Exhibit B at para 14. *See also* Exhibit B-6 at HUDSON001289-99 (email explains again the balance issues and attaches shipping schedule).

⁵¹ Exhibit A at para 14; Exhibit B at para 14. Exhibit B-6 at HUDSON001292-1300.

⁵² Exhibit A at para 15; Exhibit B at para 15. Exhibit B-7 at HUDSON001314.

⁵³ Exhibit A at para 15; Exhibit B at para 15. Exhibit B-7 at HUDSON001314.

⁵⁴ Exhibit A at para 15; Exhibit B at para 15. Exhibit B-7 at HUDSON001314.

⁵⁵ Exhibit A at para 15; Exhibit B at para 15.

⁵⁶ Exhibit A at para 16; Exhibit B at para 16. Exhibit B-7 at HUDSON001313.

⁵⁷ Exhibit A at para 16; Exhibit B at para 16. Exhibit B-7 at HUDSON001313.

responded, again not mentioning the release schedule.⁵⁸ Hudson responded, “Are you confident we can hit the release schedule?”⁵⁹ Neither man responded to this question.⁶⁰

17. Hudson followed up on September 18, 2017, stating, “Can you please send an update on all parts. Haven’t seen a confirmation on the intended barrel release schedule.”⁶¹ In an internal CVMI email to James Moore, Dan Bombria says, “I am uncomfortable sending Hudson confirmation of the order/forecast with the lack of focus on the barrel. For over a month I have been requesting Brian [a CVMI employee] work on the cycle time with no results, **because SpaceX or GD is more important** (emphasis added).”⁶²

18. A constant theme of the communications in this time period was that Hudson needed to have some idea ahead of time which parts would be arriving, in what quantities, and when.⁶³ CVMI would agree to timelines on the phone,⁶⁴ but would fail to respond to the emails seeking confirmation of timelines.⁶⁵ CVMI’s technique for dealing with Hudson communication, as demonstrated in its internal emails, was to say anything necessary to appease Hudson on the telephone, even when CVMI knew that it could not meet the agreed goals.⁶⁶

19. In late 2016, before CVMI’s failures were apparent, Hudson negotiated with CVMI to produce another part for the H9—the slide.⁶⁷ On November 14, 2017 Hudson sent a purchase order for 2000 slides.⁶⁸ On November 17, 2019 Hudson sent an email that did three things—revise

⁵⁸ Exhibit A at para 16; Exhibit B at para 16. Exhibit B-8 at HUDSON001309.

⁵⁹ Exhibit A at para 16; Exhibit B at para 16. Exhibit B-8 at HUDSON001309.

⁶⁰ Exhibit A at para 16; Exhibit B at para 16.

⁶¹ Exhibit A at para 17; Exhibit B at para 17. Exhibit C-3 at CVMI-02787.

⁶² Exhibit A at para 17; Exhibit B at para 17. Exhibit C-3 at CVMI-02787.

⁶³ Exhibit A at para 18; Exhibit B at para 18. Exhibit B-4 at CVMI-06628-35, Exhibit A-5 at HUDSON000226-27.

⁶⁴ Exhibit A at para 18; Exhibit B at para 18.

⁶⁵ Exhibit A at para 18; Exhibit B at para 18. Exhibit B-5 at CVMI-02789.

⁶⁶ Exhibit A at para 18; Exhibit B at para 18. Exhibit B-9 at CVMI-08948.

⁶⁷ Exhibit A at para 19; Exhibit B at para 19.

⁶⁸ Exhibit A at para 19; Exhibit B at para 19. Exhibit B-10 at HUDSON001553-54.

downward the expected weekly shipment amounts to 300 per week per part, request balanced shipments and set the date for Hudson's planned first article production of slides.⁶⁹ The email states, “[B]ased on the agreed to grip process, we can re-visit the weekly ship schedule. We need to know that the pipeline is being filled to support shipping parts in even quantities no more than 300/week at this time and ready to ramp w/ the slides that CVM is able to bring online (FAI planned week of 2/12/2018). **Please let me know if there is any risk to that at this time on any of the 3 components** (emphasis added).”⁷⁰ No one from CVMI objected to this timeline or provided any risks to the release schedule.⁷¹

20. After hearing nothing about the slide (CVMI agreed to shipping 300 of each part per week)⁷², on December 22, 2017 Hudson asked Lucas Fearon, the team lead on the slide project, for an update on the slide.⁷³ Fearon responded, saying “Progress on the slide project is being made. Special cutters have been designed and ordered. Programming is ongoing. The fixture design is mostly done but we have not cut chips yet. Fortunately, a benefit of our fixturing approach is that it requires relatively little manufacturing time. Once we have made our way through the holidays and all staff is back at work progress should accelerate.”⁷⁴ On January 3, 2018, Hudson asked Fearon if the original prediction for shipping (i.e. February 12, 2018) was still accurate.⁷⁵ Fearon stated that “the 2/12 FA date for Slides will need to move out somewhat.”⁷⁶ Hudson then sent 4 unanswered requests (January 3, January 5, January 10 and January 15) for a new date and explanation for the time slippage.⁷⁷ Finally,

⁶⁹ Exhibit A at para 19; Exhibit B at para 19. Exhibit B-11 at HUDSON001562.

⁷⁰ Exhibit A at para 19; Exhibit B at para 19. Exhibit B-11 at HUDSON001562.

⁷¹ Exhibit A at para 19; Exhibit B at para 19.

⁷² Exhibit A at para 20; Exhibit B at para 20. Exhibit B-12 at HUDSON000423.

⁷³ Exhibit A at para 20; Exhibit B at para 20. Exhibit A-6 at HUDSON001658.

⁷⁴ Exhibit A at para 20; Exhibit B at para 20. Exhibit A-6 at HUDSON001658.

⁷⁵ Exhibit A at para 20; Exhibit B at para 20. Exhibit A-6 at HUDSON001657.

⁷⁶ Exhibit A at para 20; Exhibit B at para 20. Exhibit A-6 at HUDSON001657.

⁷⁷ Exhibit A at para 20; Exhibit B at para 20. Exhibit B-13 at HUDSON001702-1704.

on January 15, 2018, Fearon responded stating that the “current projection for the first article is 3/7.”⁷⁸ No explanation was given to Hudson for the reasons for this delay, and the first article slide was not provided on March 7, 2018.⁷⁹

21. On February 26, 2018, Lucas Fearon, based on unavailability of personnel committed to other projects, projected internally to CVMi CEO James Moore that CVMi could possibly produce the first article slide on March 23, 2018.⁸⁰ Moore responded to Fearon, saying “I talked to Hudson and was able to push the FAI out to the week of 3/5, but they were kicking and screaming.”⁸¹ Due to the timing of the emails, it is clear that James Moore knew that March 5 was an unrealistic deadline. Moore was happy to commit to it over the phone to calm Hudson down, knowing all the while that the deadline would not be met. March 7 came and went without the first article slide—as did March 23. CVMi shipped its first article slide on April 30, 2018.⁸² In this period, CVMi failed to send balanced shipments of 300 of each part per week⁸³ as it agreed to do on October 29, 2017.⁸⁴

22. CVMi admits in internal emails that “it is no secret that [CVMi] has communication issues.”⁸⁵ In this case, CVMi’s failure to communicate ultimately destroyed Hudson’s business.

D. CVMi produced defective grips that caused magazines to fall out of guns, damaging the Hudson brand reputation, and causing Hudson \$39,447.55 in direct economic damages.

23. On March 9, 2018, Hudson notified CVMi of an issue with the grips CVMi had manufactured.⁸⁶ The email states, “Lately we have been getting customer concerns about their

⁷⁸ Exhibit A at para 20; Exhibit B at para 20. Exhibit B-13 at HUDSON001702.

⁷⁹ Exhibit A at para 20; Exhibit B at para 20.

⁸⁰ Exhibit A at para 21; Exhibit B at para 21. Exhibit C-15 at CVMi-09041-42.

⁸¹ Exhibit A at para 21; Exhibit B at para 21. Exhibit C-15 at CVMi-09041-42.

⁸² Exhibit A at para 21; Exhibit B at para 21. Exhibit C-4 at CVMi-03410-3411.

⁸³ Exhibit A at para 21; Exhibit B at para 21. Exhibit B-3.

⁸⁴ Exhibit A at para 21; Exhibit B at para 21. Exhibit B-12 at HUDSON000423.

⁸⁵ Exhibit A at para 22; Exhibit B at para 22. Exhibit C-5 at CVMi-05197.

⁸⁶ Exhibit A at para 24; Exhibit B at para 24. Exhibit C-6 at CVMi-15670.

magazines falling out when firing their guns or just simply racking their slide forward.”⁸⁷ Later that day, CVMI responded to admit that the problem was CVMI’s fault, “We found the issue is in our tooling and our inspection method.”⁸⁸ As of March 20, Hudson was in possession of 216 grips known to be affected with this issue.⁸⁹ By August of 2018, when CVMI refused to continue working with Hudson, 896 grips had to be returned to CVMI for this defect.⁹⁰ As many of these defective grips were from guns that had already been sold to customers, Hudson had to spend time and money remedying these warranty claims.⁹¹ The direct economic costs (i.e. money actually spent by Hudson as a result of the grip defects—not including lost revenues/profits from delays, etc.) totals \$39,447.55.⁹²

E. CVMI produced catastrophically defective barrels and cost Hudson \$54,452.26 in direct economic damages.

24. In April of 2018, Hudson began noticing issues with the barrels CVMI was producing for Hudson.⁹³ Hudson notified CVMI on April 27, 2018 that one of the items was “barrel and throat surface finish.”⁹⁴ As a result, James Moore instructed CVMI personnel to quarantine the barrel product and stated internally that, “Whoever is inspecting this feature should be retrained.”⁹⁵ On the same day, Moore emailed Dan Bombria internally stating that “it is absolutely unacceptable and embarrassing from CVM to ship product in this condition.”⁹⁶ In another email in the same thread, Moore acknowledges Hudson’s internal testing, saying that Hudson has “had 4 guns blow up and

⁸⁷ Exhibit A at para 24; Exhibit B at para 24. Exhibit C-6 at CVMI-15670.

⁸⁸ Exhibit A at para 24; Exhibit B at para 24. Exhibit C-7 at CVMI-15668.

⁸⁹ Exhibit A at para 24; Exhibit B at para 24. Exhibit C-16 at CVMI-15720.

⁹⁰ Exhibit A at para 24; Exhibit B at para 24. Exhibit B-3, Exhibit B-14 at CVMI-15690.

⁹¹ Exhibit A at para 24; Exhibit B at para 24.

⁹² Exhibit A at para 24; Exhibit B at para 24. Exhibit A-7 at HUDSON000489.

⁹³ Exhibit A at para 26; Exhibit B at para 26. Exhibit C-8 at CVMI-16497.

⁹⁴ Exhibit A at para 26; Exhibit B at para 26. Exhibit C-8 at CVMI-16497.

⁹⁵ Exhibit A at para 26; Exhibit B at para 26. Exhibit C-8 at CVMI-16497.

⁹⁶ Exhibit A at para 26; Exhibit B at para 26. Exhibit C-9 at CVMI-15470.

suspect this as the issue.”⁹⁷ On May 8, 2018, CVM issued an internal corrective action report that acknowledged that the root cause of the barrel issue was that CVM altered the process by increasing the boring bar diameter (i.e. not a change requested by Hudson), and that “insufficient lighting, and poor inspection technique, allowed for the barrels with compromised surface finishes to escape detection.”⁹⁸ On the same day, Hudson informed CVM that Hudson production was down due to not having any good barrels.⁹⁹

25. While the internal emails make it clear that CVM knew that they caused the problem, CVM was trying to push blame onto Hudson’s design. On May 17, 2018, James Moore emailed Hudson to say, “We’d like to also review the drawing with CY and Zach today. We should bring in ADG [Hudson’s outside engineering firm] as well. Dan B and I did a review last night and the H9 chamber area dims differ significantly from SAAMI and CIP and from what we see with other 9mm barrels that we manufacture. Not jumping to conclusions here, but it is worth looking at since it is such a unique design. Also, some drawing tolerances for this area are VERY open although CVM has been holding them close to nominal. It is extremely important for CVM that Hudson finds the root cause of the proof failures and we are willing to assist any way possible.”¹⁰⁰

26. In response to this request for a call, Hudson requested (for the second time in two days) that CVM provide the “changes made to the process after the first 2800 barrels: including feeds and speeds.”¹⁰¹ CVM failed to provide this information for the conference call,¹⁰² and has never produced

⁹⁷ Exhibit A at para 26; Exhibit B at para 26. Exhibit C-9 at CVM-15470.

⁹⁸ Exhibit A at para 26; Exhibit B at para 26. Exhibit C-10 at CVM-16466-16467.

⁹⁹ Exhibit A at para 26; Exhibit B at para 26. Exhibit B-15 at CVM-15449.

¹⁰⁰ Exhibit A at para 27; Exhibit B at para 27. Exhibit A-8 at CVM-05084.

¹⁰¹ Exhibit A at para 28; Exhibit B at para 28. Exhibit A-8 at CVM-05084.

¹⁰² Exhibit A at para 28; Exhibit B at para 28.

this information, including in discovery, leading Hudson to believe that CVMI never captured this data.¹⁰³

27. On July 23, 2018, Hudson informed CVMI that CVMI's corrective action did not work, and Hudson was returning many more barrels, including two that were received with no rifling whatsoever.¹⁰⁴ In an internal response to this email, CVMI lead machinist Merritt Bell admitted that the problem was caused by CVMI's gundrill.¹⁰⁵

28. All told, Hudson was forced to return 585 barrels. The direct economic costs (i.e. money actually spent by Hudson as a result of the barrel defects—not including lost revenues/profits from delays, etc.) total \$54,452.26.¹⁰⁶

F. CVMI's Imbalanced Shipments, production defects and failures to meet milestones forced Hudson into delinquency with respect to payments of CVMI invoices; CVMI and Hudson agreed on a payment plan, and CVMI breached the payment plan by refusing to ship on payment.

29. Hudson paid CVMI as invoices became due from December 27, 2016 to November 16, 2017.¹⁰⁷ By the end of November 2017, CVMI's imbalanced shipments, production delays and failures to meet milestones had totally decimated Hudson's capital reserves and exhausted its cashflow. As of October 1, 2017, Hudson had paid CVMI \$138,944.09,¹⁰⁸ and had received parts enabling Hudson to sell 35 guns. Hudson's standard wholesale price, per H9, was \$779.96, meaning that, through October 1, 2017, in over three months of production, CVMI had provided production parts sufficient to generate just \$27,298.60 in revenue. In accepting the purchase order, CVMI agreed to supply 2,500

¹⁰³ Exhibit A at para 28; Exhibit B at para 28.

¹⁰⁴ Exhibit A at para 29; Exhibit B at para 29. Exhibit C-11 at CVMI-05313-05315.

¹⁰⁵ Exhibit A at para 29; Exhibit B at para 29. Exhibit C-11 at CVMI-05313-05315.

¹⁰⁶ Exhibit A at para 30; Exhibit B at para 30. Exhibit A-7 at HUDSON000489-490.

¹⁰⁷ Exhibit A at para 32; Exhibit B at para 32. *Compare* Exhibit B-2 to Exhibit B-3.

¹⁰⁸ Exhibit A at para 32; Exhibit B at para 32. Exhibit B-2.

of *each part* per month. If CVMi had performed as contracted for three months, Hudson would have received parts enabling it to generate \$5,849,700.00 in revenue. This difference crippled Hudson.¹⁰⁹

30. During early 2018, Hudson made several payments attempting to pay down the outstanding invoices to maintain the relationship with CVMi.¹¹⁰ Between January 4, 2018 and May 17, 2018, Hudson paid CVMi \$598,634.62 in attempts to pay down the outstanding invoices.¹¹¹

31. In June of 2018, CVMi and Hudson agreed that CVMi would continue to ship parts when CVMi received a payment for these parts. Between June 8 and June 22, 2018, Hudson paid CVMi \$113,000.00 on a pay to ship basis.¹¹² Unfortunately, the parts that CVMi shipped for this payment included 200 defective grips that had to be returned.¹¹³ And when defective parts were returned to CVMi, they were credited against the oldest invoice, not against the shipping credit (which is revealed in an internal CVMi email—this was never communicated to Hudson or agreed to), meaning that Hudson bore all the financial damage of CVMi's failures.¹¹⁴ CVMi felt no obligation to help dig Hudson out of the hole CVMi put Hudson in, so in August, 2018, CVMi refused to ship any further products until receiving payment.¹¹⁵ Hudson had no more money to pay.¹¹⁶ So CVMi abandoned Hudson and shifted its attention to working on Hudson's competitors' products.¹¹⁷

32. In December of 2016, CVMi accepted Hudson's purchase order to buy parts necessary to make 10,000 H9 handguns. The parties agreed that 2,500 of each part would ship per month.¹¹⁸ Instead of a four-month production period resulting in 10,000 handguns at its conclusion as was

¹⁰⁹ Exhibit A at para 32; Exhibit B at para 32

¹¹⁰ Exhibit A at para 33; Exhibit B at para 33; Exhibit B-2.

¹¹¹ Exhibit A at para 33; Exhibit B at para 33, Exhibit B-2.

¹¹² Exhibit A at para 34; Exhibit B at para 34, Exhibit B-2.

¹¹³ Exhibit A at para 34; Exhibit B at para 34, Exhibit B-3.

¹¹⁴ Exhibit A at para 34; Exhibit B at para 34, Exhibit C-13 at CVMi-02214.

¹¹⁵ Exhibit A at para 34; Exhibit B at para 34, Exhibit C-14 at CVMi-04580.

¹¹⁶ Exhibit A at para 34; Exhibit B at para 34.

¹¹⁷ Exhibit A at para 34; Exhibit B at para 34, Exhibit C-17 at CVMi-05098.

¹¹⁸ Exhibit A at para 35; Exhibit B at para 35. Exhibit D to Dkt. No. 1

agreed, Hudson paid \$944,670.06,¹¹⁹ and received parts sufficient to build only 6,284 handguns, and it took 13 months for CVMI to do that.¹²⁰

In March of 2019, Hudson MFG, LLC filed for bankruptcy.¹²¹

CONCLUSION

There is no fact issue in this case that should be determined by a jury. Defendants request that the Court grant summary judgment in favor of Defendants on all of Plaintiff's claims.

Dated: January 28, 2020

Respectfully submitted,

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¹¹⁹ Exhibit A at para 35; Exhibit B at para 35. Exhibit B-2 at p. 24.

¹²⁰ Exhibit A at para 35; Exhibit B at para 35. Exhibit B-3.

¹²¹ See Dkt No.52 (suggestion of bankruptcy).

CERTIFICATE OF SERVICE

On January 28, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic filing. Parties may access this filing through the Court's CM/ECF System.

RESSLER + WYNNE RESSLER, PC

By: /s/ *Jack Reid* /s/
Jack Reid

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